TANG JOO SIM v. LEE SOO HUANG & ORS.

[O.C.J. (Kulasekaram J.) April 2, 1975]
[Singapore — Civil Suit No. 2424 of 1972]

Landlord and Tenant — Tenancy — Rent controlled premises — Tenant not in occupation of premises — Notice to quit — Whether tenant became statutory tenant — Death of former tenant — Whether personal representatives can claim to be entitled to possession — Control of Rent Act (Cap. 266), s. 27.

The facts in this case were that the deceased was the subtenant of certain premises. A notice to quit was served on him terminating the tenancy. The deceased was not in actual possession of the premises. After his death the personal representatives sought a declaration that they were entitled to possession of the premises.

Held: (1) the tenancy of the deceased had been effectively determined and even if he were living at the material time he would not become a statutory tenant because he was not in actual possession or occupation of the premises;

(2) the plaintiff had failed to show that she was a statutory tenant of the premises and therefore her claim must be dismissed.

Cases referred to:-

(1) *Weinberg* v. *Lim Seow Peng* [1955] M.L.J. 152.

(2) *Syed Ahmad Aljunied & Ors.* v. *Reshty* [1969] 1 M.L.J. 87.

CIVIL SUIT.

C. S. Wu for the plaintiff.

S. K. Lee (*Tony Lee* with him) for the first and third defendants.

J. G. Advani for the second defendant.

Kulasekaram J.: The plaintiff in this action is the sole Administratrix of the Estate of Sng Wang Yang deceased (hereinafter referred to as "the said deceased") as well as the said deceased's daughter. Her main claim here as against the first and/or third defendants is for a declaration that the plaintiff is entitled to possession of the whole of premises of 15 Emerald Hill Road, Singapore (hereinafter referred to as "the said premises").

The first defendant, Lee Soo Huang, is and was at all material times the owner of the said premises and the third defendant, Madam Koh Cheng Koon, was the first defendant's tenant of the said premises from March 1, 1957, to July 31, 1969. The second defendant, Lontong House, is a firm carrying on a restaurant business on the ground floor of the said premises.

The plaintiff averred in her amended statement of claim that the said deceased in her lifetime on or about March 6, 1957, had obtained through or from the third defendant the tenancy of the whole of the said premises at a monthly rental of $70 and had remained in continuous possession of the said premises until her death on January 26, 1969.

The plaintiff further averred that notwithstanding the fact that the tenancy of the said premises had not at any time been terminated, in or about October, 1970, the first defendant, without the consent of the plaintiff, purported to let out the whole of the said premises to the second defendant at a monthly rental of $450, following which purported letting, the second defendants entered into unlawful occupation of the whole of the ground floor as well as the major portion of the first floor of the said premises, leaving only a small room and the semi-enclosed passageway at the rear of the first floor of the said premises to remain in the plaintiff's occupation.

The first defendant had refused to receive any rent from the plaintiff since the death of Sng Wang Yang, and has denied in his solicitors' letter dated November 15, 1970, sent to the plaintiff's solicitors that the said deceased was ever his tenant.

Apart from the claim for a declaration of possession of the said premises the plaintiff also claimed as against the first and/or third defendants an account of illegal profits received in respect of the premises and payments of the sums so received to the plaintiff and also damages for certain breach of covenant for the quiet enjoyment of that part of the said premises in the occupation of the plaintiff.

All the claims against the second defendant as set out in the amended statement of claim of the plaintiff were abandoned at the outset of the trial and the plaintiff merely sought a declaration against the second defendant that they were the sub-tenants of the plaintiff in respect of that part of the said premises now occupied by them.

The first defendant by his defence denied that the said deceased or the plaintiff was ever his tenant of the said premises and said that the plaintiff was not entitled to any of her claims against him.

As the original claims against the second defendant had been abandoned by the plaintiff who is now only seeking a declaration that the second defendant is a sub-tenant of the plaintiff I do not propose to deal with the second defendant's defence.

The third defendant in her defence pleaded that she had in 1957 obtained for herself a month to month tenancy of the whole of the said premises from the first defendant and that she had thereafter on or about March 6, 1957, sublet the said premises to the said deceased at a monthly rent of $70. The said deceased was never in continuous possession of any part of the said premises and had at all material times resided at No. 24 Emerald Hill Road. After the death of the said deceased the third defendant had not received any rent from any personal representative or relative of the said deceased in respect of the said premises. The third defendant further pleaded that she had by notice dated May 29, 1969, terminated the tenancy given to the said deceased on July 5, 1969, and had thereafter surrendered her own tenancy of the said premises to the first defendant. The third defendant therefore denied all the claims of the plaintiff.

Let me first of all set out my findings of facts relevant to this case as found by me on the evidence before me.

There is no dispute that the said premises, a two-storeyed terrace house, are subject to the provisions of the Control of Rent Act, Cap. 266.

The first defendant is the owner of the said premises at all material times and had granted on March 1, 1957, a monthly tenancy at a rental of $30 in respect of the said premises to the third defendant who incidentally is his sister-in-law. The third defendant in turn had on or about March 6, 1957, sublet the whole

of the said premises to the said deceased at a monthly rental of $70 thus making a profit of $40 a month. The said deceased sublet the whole of the said premises except for a small room in the rear portion of the 1st floor first to one Ah Heng. When Ah Heng left Tan Hong Soon, DW1, became her tenant in place of Ah Heng in about July 1965, on a monthly rental of $200 The said deceased from the beginning allowed her grandson Eng Hang Koon (PW2) and his family to occupy the small room in rear on the 1st floor free of rent and when they moved out in October 1968, Tan Siew Hiang, a grand daughter of the said deceased, moved in with her family and have since been occupying that room free of rent.

Tan Hong Soon (DW1) in his evidence had claimed that in July 1965, when he first obtained his tenancy from the said deceased his tenancy was in fact for the whole of the said premises and that he had allowed the occupants of that small room on the first floor to remain there and had also agreed to supply light, water and electricity to them free of charge at the request of the said deceased. In cross examination, however, he admitted that what he took over was what Ah Heng the previous tenant had. The defence placed reliance for Tan Hong Soon's claim on the fact that one of the early counterfoils of the receipts that were issued by the said deceased to Tan Hong Soon referred to the payment of $200 as rent for the whole of 15 Emerald Hill Road. This was perhaps the only bit of evidence that lent any support to Tan Hong Soon's claim.

On the evidence before me and in particular having heard Tan Hong Soon's evidence on this point I find as a fact that the tenancy of Tan Hong Soon did not include the small room in the rear of the first floor of the said premises. In addition I find that Tan Hong Soon for the $200 that he paid as rent of the said premises was also obliged to supply the occupants of that small room with free light, water and electricity. The occupants of the small room shared the use of the common bath, kitchen and verandah in the rear of the first floor with the other occupants of that floor.

The said deceased had at no time of her life lived at the said premises. She resided in house No. 24 Emerald Hill Road which was situated on the other side of the road to the said premises and almost opposite to it. The third defendant used to regularly call at 24 Emerald Hill Road monthly or once in 2 or 3 months to collect from the said deceased the rents for the said premises and issue her with the receipts for them. After the said deceased's death in January, 1969, no further rents in respect of the said premises were paid to the third defendant. The said deceased too in her lifetime after Tan Hong Soon became her sub-tenant of the said premises used to regularly call at the said premises and collect the monthly rent of $200 from him. Towards the end of her life when the said deceased was not in good health she had told Tan Hong Soon to pay the rent to Ah Hai (identified as PW4) if he came for it. Ah Hai whenever he collected the rent issued receipts bearing the said deceased's chop, just like the receipts that the said deceased issued when she collected the rent. In all Tan Hong Soon had paid Ah Hai the rent on about 10 occasions which included the few months after the death of the said deceased when he continued to pay rent to Ah Hai when he called for it. After May 1969, Tan Hong Soon refused to pay the rent to Ah Hai when he called for it.

Now let me deal with the disputed issue of the notice to quit terminating the tenancy of the said deceased in respect of the said premises.

According to the third defendant's evidence sometime in May 1969, when she was having a conversation with the first defendant and his brother Peter Lee (DW2), an advocate and solicitor, she had mentioned that the said deceased had died sometime in January, 1969. She had also mentioned to Peter Lee that after her death whenever she went to collect the rent of the said premises nobody seemed to know anything about it. Sometimes she had met the daughter-in-law of the said deceased and she had told her that she knew nothing about the rent. She had difficulty in collecting the rents of the said premises. Thereupon Peter Lee had advised her that she could issue a notice to terminate the tenancy and get back the house. She then instructed Peter Lee to issue the notice which was duly done by Peter Lee. On this occasion she also informed the first defendant that after the termination of the tenancy she would return the house to him. The tenancy was accordingly terminated on July 5, 1969, and she thereafter surrendered her own tenancy in respect of the said premises to the first defendant at the end of July, 1969.

Peter Lee in his evidence confirmed that he had received these instructions from the third defendant to issue the notice. Acting on those instructions he had issued 2 copies of the notice to quit dated May 29, 1969, addressed

"To,

The Personal Representative of and all persons interested in the Estate of Madam Sng Wang Yang Deceased, and all persons occupying the premises known as 15, Emerald Hill Road, Singapore."

a copy of which is Ex.D4, and had through the first defendant served one copy of it on the said premises and the other copy at 24 Emerald Hill Road which was the last known place of residence of the said deceased.

The first defendant in his evidence on this point confirmed the conversation that the third defendant had with him and Peter Lee regarding the instructions for the issue of the notice to quit. He also said that on May 30, 1969, he had received 2 copies of the notice to quit from Peter Lee and had on the same day served one copy of it at 24 Emerald Hill Road by handing it to a lady who claimed she was the daughter-in-law of the said deceased and the other copy he posted on the side door of the said premises as he had found the place closed then.

Tan Hong Soon the tenant of the said deceased said that he had after the death of the said deceased continued to pay his rent for the said premises to Ah Hai and the last payment of rent that he made was for May, 1969. According to him sometime in May, 1969, he saw a letter posted on the side door of the said premises. This side door is the entrance that leads to the 1st floor of the said premises which he occupied. He took this letter down and had it explained by a

friend. When he learnt what it was all about he put back the letter in the original place. When Ah Hai came to collect the rent after that he refused to pay the rent as a result of what he had learnt from that letter. He also soon after seeing this notice to quit and refusing to pay Ah Hai the rent went to Johore Bahru and met the first defendant to find out what the position was about the said premises. He had mentioned there to the first defendant about this notice. He knew from the said deceased that the first defendant was the owner of the said premises. The first defendant in his evidence confirmed this meeting with Tan Hong Soon when he was referred to the notice to quit but he said that that was the first time he had met Tan Hong Soon. Tan Hong Soon, however, had said he had known the first defendant before this visit. It may well be that Tan Hong Soon knew the identity of the first defendant without actually knowing him personally. At any rate I do not consider this a serious discrepancy.

Ah Hai, PW4, who is the adopted son of the said deceased's son, had in his evidence said he used to help the said deceased during her lifetime in writing out the rent receipts which were issued to Tan Hong Soon. After her death he wrote out similar receipts for the plaintiff at her request. He said he had never collected rents from Tan Hong Soon. The plaintiff in her evidence denied collecting any rents from Tan Hong Soon or asking Ah Hai to write out any rent receipts or authorising anyone to collect any rents of the said premises from Tan Hong Soon.

The plaintiff went to Johore Bahru to the first defendant on 2 occasions after the death of the said deceased and tried to pay the rent in respect of the said premises but did not succeed in her efforts.

On the first occasion on September 23, 1969, according to the plaintiff, the first defendant refused to accept the rent and had told her that since her mother had died he wanted to take back the premises. He had also told her if she insisted on paying the rent then she should take out Letters of Administration. According to the first defendant, however, he had told her there that her deceased mother was not his tenant but of the third defendant and that after her mother's death a notice terminating the said deceased's tenancy had been served on behalf of the third defendant by him at 24 Emerald Hill Road and 15 Emerald Hill Road.

On the second occasion on July 30, 1970, when she saw the first defendant again with the Letters of Administration to her deceased mother's estate the first defendant told her that the Letters of Administration was of no use to him and she came away saying she would see her lawyers. The plaintiff subsequently saw her lawyers and again tried to pay the rent in respect of the said premises on behalf of the said deceased's estate to the first defendant but the cheque for the rent was returned with the curt reply that the said deceased was never his tenant.

In all the correspondence by the first defendant to the plaintiff or her solicitors there was no mention by him of the notice terminating the said deceased's tenancy or of the fact that the said deceased was the tenant of the third defendant and not of him.

It has all along been the case of the plaintiff that there was no such notice of termination of tenancy and the evidence of this notice and its service was a complete fabrication on the part of defence put forth by first and third defendants. Plaintiff's counsel submitted that this complete silence on the part of the first defendant in all his correspondence to the plaintiff about the notice of termination of tenancy and of the fact that the said deceased was the third defendant's tenant and not his strongly suggests that there was no such service of any notice of termination of tenancy.

On the other hand counsel for the first and third defendants submitted that the first defendant had already mentioned about them to the plaintiff on September 23, 1969, when she first called on him at Johore Bahru and may have considered it unnecessary to repeat them in his subsequent correspondence with the plaintiff. Besides the first defendant owed no duty to the plaintiff to put her right on these matters.

He also submitted as the third defendant had regularly gone and collected the rent of the said premises from the said deceased at 24 Emerald Hill Road for over 10 years the plaintiff should have had no difficulty in coming to know about the third defendant if she had not already known about her and should have approached her in the first instance. It was further submitted that the plaintiff probably knew about the notice to quit and that is why she did not approach the third defendant but went to the first defendant in an effort to try and persuade him to accept the rent. Defence counsel also questioned why the plaintiff's sister-in-law who lived at 24 Emerald Hill Road has not come forward to give evidence on behalf of the plaintiff.

Having carefully considered the whole of the evidence I accept the evidence of the first defendant, third defendant and Peter Lee regarding the instructions, issue, and service of the notice terminating the said deceased's tenancy in respect of the said premises and the evidence of Tan Hong Soon regarding his seeing that notice and how he had acted on it. I find that a copy of the notice, Ex.D4, had been posted on the side door of the said premises on May 30, 1969, that notice had reached Tan Hong Soon, an occupier and person having control of the said premises and he had acted on the notice in the manner he claims to have done. I also find that after the death of the said deceased Tan Hong Soon had paid the rents of the said premises to Ah Hai up to May, 1969, but had thereafter refused to pay any more rent to him because he had seen the notice to quit.

On these facts I find that such service of this notice at the said premises effectively terminated the tenancy of the said deceased in respect of the said premises on July 5, 1969.

On the facts as they are at the termination of the said deceased's tenancy of the said premises the plaintiff clearly cannot claim to be a statutory tenant of the said premises as she does not satisfy the provisions of section 27 of the Control of Rent Act.

On these facts even if the said deceased were living after the tenancy had been terminated she (the said deceased) would not have become a statutory tenant

bcause she was not 'in possession' of the said premises as required by section 27 of the Control of Rent Act. Here 'possession' by a tenant means actual possession or occupation by the tenant as opposed to legal possession. Mere occupation by Tan Siew Hiang, the grand daughter and licencee of the said deceased by itself would not suffice. It must also be the function of the licencee Tan Siew Hiang to preserve the premises for the said deceased's own ultimate homecoming. The said deceased had never lived at the said premises but had always resided at 24 Emerald Hill Road. There is no evidence that the said deceased ever had any intention of coming and living at the said premises. I find that Tan Siew Hiang was merely allowed by the said deceased to reside in that small room of the said premises and it was never intended by the said deceased that Tan Siew Hiang should reside there and preserve that room in the said premises for the said deceased's ultimate homecoming.

Of course the position would have been different if the plaintiff had come into occupation of the said premises at any time before the said deceased's tenancy had been terminated which means before July 5, 1969, and thereafter continued in occupation of the premises. Then she would have become a statutory tenant of the said premises on the termination of the tenancy but that is not the case here. The plaintiff did not come to live at the said premises until sometime in October, 1971, when it was too late.

Now for the plaintiff to succeed in her claim for a declaration that she is entitled to the possession of the whole of the said premises she must show that she is a statutory tenant of the said premises which she has failed to do so.

Counsel for the plaintiff submitted relying on the decision in *Weinberg* v. *Lim Seow Peng*[1] that once a tenant was in possession of premises subject to the provisions of the Control of Rent Act he can only be deprived of that possession either by the tenant surrendering the possession to the landlord or by an order of court for possession being made against him in favour of the landlord. He submitted as neither of these things has happened here the plaintiff is still entitled to possession here in law.

I do not consider *Weinberg's* case is applicable to the circumstances of this case.

In that case the landlord of a 'rent controlled' premises applied for an order for possession against the tenant's husband who was in occupation of the premises after termination of the tenancy, while the tenant was abroad and it was held that such an order for possession could not be made against the husband who was the licencee of the tenant without the tenant being joined as a party to the action. There occupation of the premises by a licencee, the husband of the tenant, was tantamount to occupation by the tenant of the premises having regard to special relationship of husband and wife. The position in the present case is different.

Besides having regard to the decision in *Syed Ahmed Al-Junied and others* v. *Reshty*[2] I do not consider that a tenant of a controlled premises is entitled to possession even after his contractual tenancy has been terminated merely because he has not surrendered possession of the said premises or an order for possession has not been made against him. Such a tenant once his contractual tenancy had been determined is only entitled to possession of the premises for so long as he continues to be a statutory tenant.

For these reasons the claims of the plaintiff against all three defendants are dismissed with costs.

Claim dismissed.

Solicitors: *Donaldson & Burkinshaw; S. K. Lee & Co.; Advani & Hoo.*